IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

CRL.A.No. 662 of 1998()

CC.420/1997 of JUDL.MAGISTRATE OF FIRST CLASS COURT, THIRUVALLA
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APPELLANT/COMPLAINANT:

P.M. MATHAI, AGED 48 YEARS,
S/O. MATHAI MATHAI, RESIDING
AT PARAKKADAVIL HOUSE,
KANJOOR.P.O., THIRUVALLA.

BY ADV. SRI.VINOD J.DEV.

RESPONDENTS:
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1. **MANOJ.J. MATHEW,**
   AGED 30 YEARS,
   S/O. JACOB MATHEW,
   THOTTUNKAL HOUSE,
   KUTTAPUZHA, TIRUVALLA.

2. **STATE OF KERALA, REP. BY**
   PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI. K.M. FIROZ.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/02/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl. Appeal No. 662 of 1998

Dated this the 14th day of February, 2007

Judgment

This appeal is filed against the order of acquittal of the accused in a complaint under section 138 of the Negotiable Instruments Act. Notice was issued in the appeal on 12.10.1998, but, process was not filed. Thereafter, steps were taken after much delay. Notice was returned stating that respondent had gone to Gulf. New address was not furnished. On 5.10.2006, two weeks' time was granted to cure the defect as last chance, but, no steps were taken to cure the defect so far. Without sending notice to the accused and without hearing him, appeal against the order of acquittal cannot be allowed. In any event, I have gone through the merits of the case. The case of the appellant was that accused borrowed Rs.2,10,000/- for discharge of a debt and issued a cheque. It was dishonoured with the endorsement that "the account closed." Accused denied the transactions. According to him, he has not executed the cheque in favour of the complainant. His contention is that complainant managed to get a blank cheque leaf from him and wrote down the amount etc. in the cheque leave and presented the cheque. DW1 was examined and marked Exts.D1 to D3 on behalf of the

defence. DW1 is the Sub Inspector of Police, Thiruvalla. He was examined regarding the missing of the cheque. Ext.D2 is the statement recorded by DW1 from the complainant. The complainant deposed before court as PW1 that he gave an amount of Rs.2,10,000/- to the accused on 10.11.1991 itself and accused had drawn and issued Ext.P1 cheque. In Ext.D1 it is seen that the amount was given prior to 10.11.1991 at the shop of the father of the accused. In Ext.D2 statement it is stated that it was given in the residence of the accused and not from the shop of the father. The cheque was issued only when that amount was not repaid. He also stated that even though he paid huge amount, he is not even able to identify the accused by sight. Such a huge amount would not have been given without any collateral security. Court also found that there is material difference in the admitted signatures of accused with the signature in the cheque. Taking into account all the evidence, trial court found that execution of the cheque by the accused itself is not proved and, therefore, presumption is rebutted and the appellant/complainant was not able to prove that cheque was issued for a legally enforceable debt. I agree with the above view. In any event, such a finding is plausible and

I see no ground to interfere in the order of acquittal. The appeal is dismissed.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy J.

Crl.A. No. 662 of 1998

Judgment

14-2-2007